

AARON M. OGLETREE

vs.

CLEVELAND STATE UNIVERSITY

Deposition of
Aaron Ogletree

September 03, 2021



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1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
4 AARON M. OGLETREE,)
5 Plaintiff,)
6 vs.)
7 CLEVELAND STATE)
8 UNIVERSITY, ET AL.,)
9 Defendants.)

Civil Action No.
1:21-cv-00500

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REMOTE VIDEOCONFERENCE DEPOSITION OF
AARON M. OGLETREE

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Taken via Zoom with all parties in their
respective locations.

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on September 3, 2021, at 10:03 a.m.

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Reported by: Rhonda Lawrence

23

24

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STIPULATIONS

It is stipulated by and among counsel
for the respective parties that the deposition
of AARON M. OGLETREE, the Plaintiff herein,
called by the Defendants under the applicable
Rules of Federal Civil Court Procedure, may be
taken at this time by the stenographic court
reporter and notary public pursuant to notice;
that said deposition may be reduced to writing
stenographically by the court reporter, whose
notes thereafter may be transcribed outside the
presence of the witness; and that the proof of
the official character and qualification of the
notary is waived.

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1 AARON M. OGLETREE

2 being first duly sworn, as hereinafter
3 certified, deposes and says as follows:

4 CROSS-EXAMINATION

5 BY MR. MARTI:

6 Q. Mr. Ogletree, my name is Todd Marti.
7 we've spoke on the phone, but I don't think
8 we've met face-to-face. I represent the
9 defendants in this case.

10 we're here to take your deposition
11 today. Have you ever had your deposition taken
12 before?

13 A. I have not.

14 Q. Have you ever testified in court before?

15 A. I have not.

16 Q. Okay. well, let me explain what we're
17 trying to accomplish and how these things work
18 so that we're all working from the same set of
19 rules. Our purpose here today is to pin down
20 certain facts that are relevant to your case.
21 The court reporter has sworn you in, and I'm
22 going to ask you a series of questions, and the
23 court reporter will write down anything that any
24 one of us may say. It's just like you're in

1 court testifying in front of a judge or jury.

2 So it's really important that we're all paying
3 close attention and taking care with our
4 answers.

5 A. Okay.

6 Q. If I ask you a question and you don't
7 hear it, will you agree to let me know?

8 A. Yes.

9 Q. If I ask you a question and you don't
10 understand that question, will you agree to let
11 me know?

12 A. Yes.

13 Q. Are you under the influence of alcohol
14 or any other medications that would impair your
15 ability to testify truthfully today?

16 A. No.

17 Q. Is there any reason why you can't
18 testify truthfully today?

19 A. No.

20 Q. Okay. All right. So if I ask you a
21 question and you answer and didn't tell me you
22 didn't understand and so forth, I'll assume it's
23 a full and complete answer. Is that fair?

24 A. Yes.

1 Q. Okay. Mr. Ogletree, I know this is
2 going to be a bit of a bone of contention, but
3 it's part of the standard procedure. Could you
4 take your laptop and scan your immediate area,
5 please?

6 MR. BESSER: Wait, wait. No. No.

7 MR. MARTI: well, that's standard
8 procedure.

9 MR. BESSER: No. First of all, no, it's
10 not. Second, you're a state actor. That's a
11 search. We don't consent. You can ask him if
12 there's anyone in the room. You can ask him if
13 he's got any devices in the room.

14 BY MR. MARTI:

15 Q. Do you have anyone else present with
16 you, Mr. Ogletree?

17 A. I do not. I have a dog in the room.

18 Q. well, that's fine. Do you have any
19 materials with you now?

20 A. I do not.

21 MR. MARTI: Okay. well, I note your
22 objection. I'm not going to interrupt the
23 deposition to call the court, but I do reserve
24 the right to raise this at a later date.

1 MR. BESSER: All right.

2 BY MR. MARTI:

3 Q. Mr. Ogletree, can you -- let me ask,
4 where are you physically today, Mr. Ogletree?

5 A. I'm currently in my bedroom.

6 Q. Okay. So can you walk us through your
7 educational background, please?

8 A. Yeah. I graduated from Ohio Virtual
9 Academy, attended Tri-C, transferred to CSU,
10 where I'm presently at.

11 Q. How long were you at Tri-C?

12 A. I had one semester, then a break in
13 between, and then another two semesters.

14 Q. Okay. And what did you study there?

15 A. I initially started on criminal justice,
16 and then to associate's of science.

17 Q. Okay. And what are you studying at CSU?

18 A. Chemistry.

19 Q. Okay. How far along into the program
20 are you?

21 A. I am second semester.

22 Q. So would you be a sophomore, then?

23 A. Yes.

24 Q. Okay. All right. Have you taken any

1 online tests other than the one that we're
2 litigating today during your time at Tri-C or
3 CSU?

4 A. Yes.

5 Q. Can you describe for us how those tests
6 were proctored?

7 A. Most of them had no proctoring. This
8 was the very first proctored test.

9 Q. This is the only proctored test you've
10 been involved in, then?

11 A. Yes.

12 Q. Okay. Yesterday morning, I sent a
13 series of exhibits to you and your counsel. Did
14 you receive those?

15 A. Yes, I did.

16 Q. Do you have them handy?

17 A. Yes.

18 Q. Okay. Could you go to -- before we get
19 there, where -- what's your residential address,
20 Mr. Ogletree?

21 A. It is 4822 Russell Avenue in Parma, Ohio
22 44134.

23 Q. And is that the location where you took
24 the test that we're litigating today?

1 A. Yes, it is.

2 Q. Okay. Could you go to the document I
3 sent you that was marked as Exhibit A, please.

4 A. Yes.

5 ==0==

6 (Deposition Exhibit A marked.)

7 ==0==

8 BY MR. MARTI:

9 Q. Take a moment, look it over. Take as
10 long as you like, and let me know when you're
11 ready to talk about it.

12 A. Okay.

13 Q. Okay. I'll represent to you that this
14 is a document that the Cuyahoga County Auditor,
15 or whatever it's called in Cuyahoga County, has
16 on its website describing the property where you
17 live. It indicates that the house has about
18 almost 1400 square feet. Does that sound
19 accurate?

20 A. I really can't say. I'm not very good
21 at measurements; so...

22 Q. Well, let's try a different metric here.
23 It indicates that it has nine rooms. Does that
24 sound right?

1 A. Yeah, about.

2 Q. Okay. And six bedrooms?

3 A. Five.

4 Q. Five. Okay. Maybe one's used for an
5 office or something like that, other purposes?

6 A. (Nods.)

7 Q. One of the rules I should have gone over
8 when we started is, because the court reporter
9 is writing everything down, you have to say yes
10 or no. I understood what you meant by shaking
11 your head, but for the record, you need to
12 answer yes or no.

13 A. I apologize.

14 Yes, five bedrooms.

15 Q. Okay. And one of them is probably used
16 for some other purpose?

17 A. Yes.

18 Q. Okay. So who resided in that house on
19 the day that you took the test in question?

20 A. My mother, my younger brother, and my
21 younger sister, as well as myself.

22 Q. Okay. So your mother and two other
23 siblings?

24 A. Yes.

1 Q. So four people. were they all home when
2 you took the exam?

3 A. Yes.

4 Q. Okay. So if you could take a look at
5 the document that I sent to you that was marked
6 as Exhibit B.

7 ==0==

8 (Deposition Exhibit B marked.)

9 ==0==

10 BY MR. MARTI:

11 Q. Look that over and take as much time as
12 you'd like and let me know when you're ready to
13 talk about this.

14 A. Okay.

15 Q. Okay. Have you seen this document
16 before?

17 A. I have.

18 Q. Okay.

19 A. But not prior to the exam.

20 Q. Okay. When do you think you saw it?

21 A. I can't remember.

22 Q. So sometime before you took the exam
23 that we're dealing with today?

24 A. I'm sorry, what was that?

1 Q. So did you say sometime before or after
2 the exam we're dealing with today?

3 A. It was sometime after the exam.

4 Q. After. Okay. Fair enough.

5 I also sent you a document that's marked
6 as Plaintiff's Exhibit 2. If you could pull
7 that up, look at it, and let me know when you're
8 ready to talk about it.

9 A. Okay.

10 Q. All right. Have you seen this document
11 before?

12 A. I have.

13 Q. Okay. When do you think you saw it for
14 the first time?

15 A. The same time, after the exam.

16 Q. Sometime after the exam?

17 A. (Nods.)

18 Q. Okay. Let's go to the document that I
19 sent you that's marked as Exhibit C.

20 --0--

21 (Deposition Exhibit C marked.)

22 --0--

23 A. Okay.

24

1 BY MR. MARTI:

2 Q. Have you seen this document before?

3 A. Yes, I have.

4 Q. And it appears to be an email that you
5 sent to Kelly King on January 18, 2021; is that
6 correct?

7 A. That appears correct.

8 Q. Go ahead. I'm sorry. I didn't mean to
9 cut you off.

10 A. I would have to check my records to
11 verify, but it does appear to be from that date.

12 Q. Okay. Does it appear to be an authentic
13 copy of that email?

14 A. It does.

15 Q. Okay. So if you go into the text of
16 that email -- let me figure out how many
17 sentences it is here. So the fifth full
18 sentence in this email where it starts with the
19 words, "In this policy," do you see where I am?

20 A. Yes.

21 Q. Can you read that sentence into the
22 record for us, please?

23 A. Sure. In this policy, the instructor
24 claimed a right to ask students of this

1 chemistry section to show her and/or the
2 proctors of the exam the protected private
3 spaces of students within this course.

4 Q. Okay. So what were you referring to
5 here?

6 A. I was referring to a syllabus policy
7 which the professor stated there was a right to,
8 at any time, before or after or during the exam,
9 to have students show their workspaces.

10 Q. So that's the scan that's at issue in
11 this case?

12 A. Yes.

13 Q. Okay. So if we go down a few more
14 sentences a -- so that was the fifth sentence.
15 I think it's the sixth sentence. It's the
16 sentence that starts with the words, "As I have
17 mentioned in previous emails." Do you see where
18 I am?

19 A. Yes.

20 Q. Could you read that sentence for us,
21 please?

22 A. As I have mentioned in previous emails,
23 while yes, it is true CSU has a legitimate
24 interest in preserving the integrity of the

1 exam, that does not constitute a reasonable
2 search as you should be aware.

3 Q. So do you still recognize that CSU had a
4 legitimate interest in preserving the integrity
5 of the exam?

6 A. I do.

7 Q. And this email, I think we established,
8 was sent on January 18, 2021. Any dispute about
9 that?

10 A. I don't believe so.

11 Q. Okay. Great.

12 We're going to skip an exhibit. We're
13 going to go to Exhibit E, as in Ed.

14 ==0==

15 (Deposition Exhibit E marked.)

16 ==0==

17 A. Okay.

18 BY MR. MARTI:

19 Q. Look it over, let me know when you're
20 ready to talk about it.

21 A. Okay.

22 Q. So it appears to be an email exchange
23 between you and Kelly King on February 17, 2021.
24 Do you have any reason to dispute that?

1 A. I do not.

2 Q. Do you have any reason to dispute the
3 authenticity of this document?

4 A. No.

5 Q. Okay. I'm sorry, were you going to say
6 something?

7 A. No.

8 Q. So this is an email. We have to sort of
9 read it backwards and start on the bottom of
10 page 1. This is the first part of the email
11 exchange, as I understand it; is that correct?

12 A. That is correct.

13 Q. And this is an email that you received
14 from Testing Services about 10:25 a.m. on
15 February 17; is that correct?

16 A. That sounds approximately correct.

17 Q. Okay. And that's about when you
18 received this email?

19 A. Yes.

20 Q. Okay. And February 17th is the date of
21 the test in question, isn't it?

22 A. I'm sorry, what was that?

23 Q. February 17th was the test in question
24 here?

1 A. That is correct.

2 Q. Okay. Could you read the second
3 sentence of that email into the record for us,
4 please?

5 A. Yes. It states, I will be checking your
6 ID, your surroundings, and your materials. You
7 are allowed to have a nonprogrammable
8 calculator, blank scratch paper and the attached
9 formula sheet.

10 Q. Okay. So what did you understand
11 them -- this email to be referring to when it
12 says, I will be checking your ID and your
13 surroundings?

14 A. It was very similar to the syllabus
15 policy, so I figured it was a similar room scan.

16 Q. Okay. Very good.

17 Going up further to your part of the
18 email exchange, the email that was sent at 10:40
19 a.m. Do you see where I am?

20 A. Yes.

21 Q. Okay. And that's about the time you
22 sent this email?

23 A. That is approximately the time I sent
24 it.

1 Q. Okay. Great.

2 If you could go to the

3 second-to-the-last full paragraph in that email

4 and read that into the record for us, please.

5 A. Are you referring to the one that begins
6 with "Finally"?

7 Q. No, the one that says, "As a side note."

8 A. Okay. As a side note, I currently have
9 confidential settlement documents in the form of
10 late arriving 1099s scattered about my work area
11 and there is not enough time to secure them.
12 Any breach of confidentiality will be included
13 in claims brought against the University.

14 Q. Okay. Thank you.

15 So what documents were you referring to
16 here?

17 MR. BESSER: Hold on a sec. Aaron, you
18 can answer, but you know that you have to abide
19 by any contracts that you previously signed. So
20 you can only answer to the extent that you
21 wouldn't be violating them.

22 A. Those documents are confidential
23 settlement documents.

24 Q. With who?

1 MR. BESSER: You can answer if you're
2 allowed to without breaching.

3 A. I am not permitted to disclose that.

4 Q. Okay. How many pages of documents were
5 there?

6 A. I don't remember.

7 Q. More than five?

8 A. I really don't remember.

9 Q. How much space did they take up?

10 A. That's a strange question.

11 MR. BESSER: You can just answer if you
12 can, Aaron.

13 A. Not much space. It was approximately --
14 I can't answer that.

15 Q. All right. Well, let me try and give
16 you an example. Do you know how big a legal pad
17 is?

18 A. I do not.

19 Q. Do you know how big an 8 and a half by
20 11 piece of paper is?

21 A. Yes.

22 Q. Do you know how big a ream of 8 and a
23 half by 11 paper is?

24 A. Yes.

1 Q. Is it bigger than that?

2 A. No.

3 Q. Half that?

4 A. No.

5 Q. A quarter of that?

6 A. Potentially.

7 Q. Okay. Were they bound or were they
8 loose?

9 A. Loose.

10 Q. Okay. Were they spread out or were they
11 piled?

12 A. Piled.

13 Q. So one single pile?

14 A. I believe so.

15 Q. Okay. Why couldn't you simply move
16 them?

17 A. That's quite a few issues, actually. I
18 was currently in the process of painting the
19 room, so the storage area which I had was
20 unavailable. The only spot I had was my desk.

21 Q. Any reason why you couldn't have put
22 them on the floor?

23 A. They're important documents.

24 Q. Any reason why you couldn't have put

1 them in another room?

2 A. Yes. Confidential.

3 Q. What is that reason?

4 A. They're confidential settlement
5 documents.

6 Q. Couldn't put them in an envelope, ask
7 your family members not to look at them?

8 A. I could, but --

9 Q. Okay. You don't trust your family
10 members to abide by that?

11 A. I do.

12 MR. BESSER: Objection.

13 Q. You do trust them to abide by that?

14 A. Yes.

15 Q. Why couldn't you take the test in some
16 other location within your house?

17 A. Because there are no suitable testing
18 environments besides my bedroom.

19 Q. What do you mean by "suitable testing
20 environments"?

21 A. I have to meet the requirements of
22 issued policies and that allow me to test
23 distraction-free.

24 MR. MARTI: Okay. I'm sorry. Is it

1 possible to read that back? I think I lost some
2 of that transmission -- the answer back.

3 (Record read as requested.)

4 BY MR. MARTI:

5 Q. So what issued policies are you talking
6 about?

7 A. I was referring to the general testing
8 policies. I don't remember the specific policy.

9 Q. So did CSU dictate where you would take
10 the test?

11 A. No.

12 Q. Okay. So I guess I'm confused about
13 these policies that you're referencing.

14 A. I can't remember where they were from at
15 the time, but...

16 Q. So you've seen the video of the -- in
17 the case that we produced, haven't you?

18 A. I have not.

19 Q. You've not reviewed that?

20 A. No.

21 Q. Do you know whether the proctor saw the
22 documents that you're referencing here?

23 A. I can't state whether they did or not.

24 Q. Do you know whether the other students

1 saw the documents you're referencing here?

2 A. I can't state whether they did or not.

3 Q. Okay. Did you make any effort to cover
4 or obscure those documents at all?

5 A. I did.

6 Q. Okay. Is there a reason why you
7 couldn't have simply just put them upside down?

8 A. I tried that as well, but you could see
9 through the papers.

10 Q. I'm sorry. Say that again, please.

11 A. You could see through the paper.

12 Q. Were they onion skin paper or something
13 like that?

14 A. It was very thin paper.

15 Q. The email we just looked at, Exhibit E,
16 indicates that the test is going to be around
17 12:30, 12:45. Did it happen about that time?

18 A. I don't remember exactly when.

19 Q. In that ballpark?

20 A. Sounds about right.

21 Q. Okay. Did anyone from CSU physically
22 enter your house to proctor you?

23 A. No.

24 Q. Would CSU have been able to see your

1 surroundings if you hadn't moved your computer
2 around?

3 A. No.

4 Q. Okay. Could you see the other students
5 while you were taking the test?

6 A. Yes.

7 Q. All the time, or when?

8 A. Any time that I wasn't focusing on my
9 test.

10 Q. How long did it take you to do the room
11 scan that they asked for?

12 A. I don't remember exactly.

13 Q. Well, other witnesses have testified it
14 was, you know, maybe 20 seconds. Does that
15 sound about right?

16 A. Yeah, that sounds approximately correct.

17 Q. Okay. So who was home at the time you
18 took the test?

19 A. My mother, my brother, and my younger
20 sister.

21 Q. So there's a total of four people there?

22 A. Yes.

23 Q. So if we could, let's go back to Exhibit
24 A again, please. Are you ready?

1 A. Yes.

2 Q. So this document indicates that the
3 house has a basement of 1041 square feet. Does
4 that sound about right, full basement?

5 A. I'm not sure of the exact measurements,
6 but I assume whoever measured --

7 Q. Okay. So was it a finished basement?

8 A. No.

9 Q. So let's go to Exhibit F, please.

10 --0--

11 (Deposition Exhibit F marked.)

12 --0--

13 A. Okay.

14 BY MR. MARTI:

15 Q. So this is an email you sent to Kelly
16 King about 1:44 on February 17, 2021; is that
17 correct?

18 A. That appears to be correct.

19 Q. Do you have any reason to doubt the
20 authenticity of this email?

21 A. I do not.

22 Q. So how long did it take you to complete
23 the test?

24 A. I don't remember exactly.

1 Q. Can you give me a ballpark?

2 A. Approximately 40, 45 minutes.

3 Q. Okay. So if you start the test about
4 12:30, say it's a 45-minute test, you're done a
5 quarter after 1:00. Does that sound about
6 right?

7 A. Yeah.

8 Q. So this email was sent about a half hour
9 later, after that. Does that sound about right?

10 A. That sounds about right.

11 Q. Okay. Let's go into the second
12 paragraph, and could you read the second
13 sentence of that paragraph into the record,
14 please?

15 A. Yes. while I managed to selectively
16 move the camera to limit injuries, one 1099 form
17 bearing my name, SSN, settlement value, and
18 entity which paid the settlement and its TIN
19 became exposed as my elbow brushed the covering
20 papers while panning my laptop around.

21 Q. So what do you mean by selectively
22 moving the camera?

23 A. I attempted to move the camera only to
24 display what was meant to be in the view.

1 Q. Did anybody from CSU push back about the
2 scope of your scan?

3 A. I don't recall. I do remember having to
4 stop a second longer on my loose leaf paper, I
5 believe.

6 Q. I'm sorry, say that last part again,
7 please.

8 A. The loose leaf paper.

9 Q. The papers for the exam?

10 A. That and the scratch paper to do my
11 calculations.

12 Q. Okay. Very good.

13 So the proctor indicated that she saw no
14 tax documents, anything like that. Do you have
15 any ability to dispute her testimony on that
16 point?

17 A. I don't believe so. Not at the moment.

18 Q. Okay. So if we could go down two more
19 sentences to the sentence that says,
20 "Additionally, the search disclosed." Do you
21 see where I am?

22 A. Yes.

23 Q. Can you read that sentence into the
24 record for us.

1 A. Additionally, the search disclosed other
2 personal and private information such as
3 potentially the names and amounts of medications
4 which I take regularly which are placed on my
5 nightstand nearby my desk.

6 Q. Okay. Thank you.

7 So were those medications there at the
8 time that you received the email we looked at as
9 Exhibit E?

10 A. Yes.

11 Q. Okay. Any reason why you couldn't have
12 moved them in the hour and a half between
13 Exhibit E and when the test started?

14 A. No.

15 Q. Okay. The proctor who took the test
16 indicated that she didn't see any medications.
17 Do you have any ability to dispute her testimony
18 on that point?

19 A. I don't believe so.

20 Q. How do you know that the other students
21 saw either the tax documents or the medications
22 you reference here?

23 A. I do not.

24 Q. Let's go to Exhibit G, please.

1 --0--

2 (Deposition Exhibit G marked.)

3 --0--

4 BY MR. MARTI:

5 Q. This is a multipage email string, so you
6 might want to start at the bottom and work your
7 way forward.

8 A. Okay.

9 Q. So this appears to be an email chain
10 between you and Testing Services on the
11 afternoon into the early evening of February
12 17th. Do you have any reason to doubt that?

13 A. It appears to be so. It appears to be
14 incomplete.

15 Q. How so?

16 A. The random closing at the top of this
17 document, which I don't remember.

18 Q. You're talking about the line above the
19 first page, top of the first page?

20 A. I'm talking about Best Regards,
21 Cleveland State University Testing Services.

22 Q. Okay. So as to the portion that is
23 there, do you have any reason to doubt its
24 authenticity?

1 A. I do not.

2 Q. Okay. So let's go to -- do you have any
3 reason to doubt that these exchanges occurred at
4 about the times that are mentioned in these
5 emails?

6 A. That appears approximately correct.

7 Q. Okay. Very good.

8 So let's go to page 2 of this email.
9 It's an email from Testing Services to you at
10 5:56 p.m. Do you see where I am?

11 A. Yes, I do.

12 Q. Okay. Could you read the second full
13 paragraph of that email into the record, please?

14 A. Sure. The cursory review of your
15 immediate testing space is a Testing Services
16 process, not a University or instructor specific
17 policy. This is done to confirm that only
18 permitted materials are present before the start
19 of the exam. All students, regardless of the
20 course or instructor, are asked to do this as
21 part of the check-in process. If you have
22 further questions regarding this, please feel
23 free to reach out to me at any time.

24 Q. Do you have any reason to dispute what's

1 said there?

2 A. Yes.

3 Q. Okay. Explain that for us.

4 A. The director of Testing Services had
5 contradicting information.

6 Q. Can you elaborate, please?

7 A. I'm not sure exactly how.

8 Q. Well, you mentioned contradicting
9 information. What was that contradicting
10 information?

11 A. Okay. Specifically the very first
12 sentence, the cursory review of your immediate
13 testing space is a Testing Services process, not
14 a University or instructor specific policy.

15 Q. Okay. And what contradicted that?

16 A. She made a statement saying that it was
17 a required University policy. I don't remember
18 exactly what it was.

19 Q. Did you have a face-to-face conversation
20 with her or something like that?

21 A. I don't believe this was a face-to-face
22 conversation.

23 Q. Do you know when it would have occurred?

24 A. I don't remember.

1 Q. Okay. Do you have any -- was it a
2 telephone conversation?

3 A. No.

4 Q. Email, text? How was it communicated?

5 A. I believe email. I'm not 100 percent
6 sure on that.

7 Q. Okay. Let's go to Exhibit H.

8 --0--

9 (Deposition Exhibit H marked.)

10 --0--

11 A. I do not see Exhibit H.

12 MR. MARTI: I'm sorry. I sent it
13 earlier this morning. I apologize. I think it
14 was around 8:30 this morning. I apologize.

15 MR. BESSER: Hold on. I do have it.

16 BY MR. MARTI:

17 Q. Do you have it, Aaron?

18 MR. BESSER: I haven't sent it yet.
19 Hold on. I'm sending it.

20 Okay. I just sent it.

21 THE WITNESS: I haven't received it yet.

22 MR. BESSER: Give it a sec.

23 THE WITNESS: And there it is.

24 MR. MARTI: Great.

1 THE WITNESS: Okay.

2 BY MR. MARTI:

3 Q. Okay. So at least the first page,
4 carrying over on to page 2, is an email from you
5 to Kelly King on February 24th; is that correct?

6 A. That appears approximately correct. I
7 don't recall exactly when I sent it.

8 Q. Okay. Do you have any reason to doubt
9 the authenticity of this document?

10 A. I do not.

11 Q. Okay. Thank you.

12 Okay. Let's go to Exhibit I, please.

13 --0--

14 (Deposition Exhibit I marked.)

15 --0--

16 A. Okay.

17 BY MR. MARTI:

18 Q. Okay. So this seems to be an email that
19 you sent to various folks at CSU on February 28,
20 2021. Do you have any reason to dispute the
21 authenticity of this email?

22 A. I do not.

23 Q. Okay. So let's go to Exhibit J.

24 --0--

1 (Deposition Exhibit J marked.)

2 --0--

3 A. Okay.

4 BY MR. MARTI:

5 Q. Are you ready to talk about this, or do
6 you need some time to review?

7 A. I think I remember it.

8 Q. Okay. Fair enough.

9 So you filed this document to start this
10 lawsuit; is that correct?

11 A. That is correct.

12 Q. Okay. And I think you filed under oath.
13 Yeah, it's a verified complaint. Do you stand
14 by the factual assertions you made in this
15 document?

16 A. I think there was one thing, but I don't
17 remember what it was, but yes, I stand by the
18 vast majority of it.

19 Q. Okay. And can you think of anything in
20 particular that you don't stand by?

21 A. I think it was more of a -- I don't
22 remember exactly what it was, but I think it was
23 something related to knowing that the documents
24 were seen.

1 Q. I'm sorry. I didn't catch that. What's
2 that last thing you said?

3 A. I believe it was -- I'll just real quick
4 review it.

5 Q. Sure.

6 A. That was it.

7 Q. Okay.

8 A. I do not stand by paragraph 40,
9 defendants were fully aware of plaintiff's
10 intention to refuse any searches. I can't
11 testify as to what they were aware of.

12 Q. All right. Fair enough. Let's go back
13 a couple pages, page 8 of this document. And
14 more specifically paragraph 59.

15 A. What about that paragraph?

16 Q. Can you read that for us, please?

17 A. Defendants did not limit their search to
18 a scope which was reasonable given their
19 suspicions and information.

20 Q. So what would have been reasonable?

21 MR. BESSER: Objection. That calls for
22 a legal conclusion.

23 A. I cannot answer this because I'm not an
24 attorney.

1 Q. Well, you wrote this, didn't you?

2 A. I did.

3 Q. So what did you mean when you wrote it?

4 MR. BESSER: Objection.

5 You can answer that.

6 A. I don't recall what the meaning was
7 specifically behind this as I wrote it.

8 Q. So you can't tell us what would have
9 been a reasonable approach to this problem,
10 then?

11 MR. BESSER: Objection. Legal
12 conclusion.

13 A. Yes.

14 Q. Can you or can't you?

15 A. I cannot answer that question. I'm not
16 an attorney.

17 Q. Okay. Let's go to Exhibit K.

18 --0--

19 (Deposition Exhibit K marked.)

20 --0--

21 MR. BESSER: Aaron, do you need time to
22 take a break to read that through?

23 THE WITNESS: No. I'm almost done.

24 Okay.

1 BY MR. MARTI:

2 Q. Okay. So Exhibit K, this is your motion
3 for preliminary injunction; is that correct?

4 A. That is correct.

5 Q. And you wrote this document; that's
6 correct?

7 A. Yes.

8 Q. And you filed it with the court; that's
9 correct?

10 A. That is correct.

11 Q. So you stand by it?

12 A. Yes.

13 Q. Okay. So let's go to page 7. I'm
14 sorry, page 11. I apologize. Actually, I'm
15 sorry. Let's go to 7, actually, instead.

16 A. Okay. I'm at page 7.

17 Q. Okay. Do you see the sentence that
18 begins at line 152 and goes over to 155?

19 A. I do.

20 Q. Can you read that for us, please?

21 A. Yes. Plaintiff contends that he
22 possesses a reasonable expectation of privacy in
23 all of these areas as he took normal precautions
24 to maintain his privacy by ensuring that the

1 camera on his laptop was oriented in such a way
2 as to only reveal his upper torso and face and
3 nothing else to the school officials and
4 students in the Zoom meeting.

5 Q. So you stand by that statement, correct?

6 A. I do.

7 Q. Okay. And let's go further down the
8 page and the sentence that starts on line 162,
9 goes through 164. Can you read that for us,
10 please?

11 A. Yes. Turning to the second essential
12 element for this Court to determine, plaintiff
13 would like to recognize the defendants'
14 legitimate interest in fulfilling its
15 governmental function of providing higher
16 education while ensuring academic integrity.

17 Q. Do you still stand by that statement?

18 A. Yes.

19 Q. Let's go to page 11 now.

20 A. Okay.

21 Q. And do you see the sentence that starts
22 on line 244?

23 A. Yes.

24 Q. Can you read that for us, please?

1 A. Finally, because the University
2 possesses other measures with which it can
3 preserve academic integrity, the searches
4 conducted by defendants go completely awry of
5 the purpose of the TLO reasonability test as the
6 interests of the students are invaded far more
7 than is necessary for the defendants to preserve
8 the academic integrity in the University.

9 Q. So what were the other measures that you
10 were referring to here?

11 A. I'm sorry, what was that?

12 Q. What were the other measures that you
13 were referring to in this sentence?

14 A. I don't recall exactly which ones they
15 were, but I did have a conversation with the
16 director of Testing Services.

17 Q. Can you describe that for us, please?

18 A. I don't recall.

19 Q. Well, I don't mean to be difficult, but
20 you filed a document with the Federal Court.
21 You vouched for its accuracy. So what are the
22 other measures that you referenced in that
23 document?

24 MR. BESSER: Objection. Asked and

1 answered.

2 A. What?

3 MR. BESSER: Objection. Asked and
4 answered.

5 Q. You're still obligated to answer,
6 though.

7 A. I do not recall.

8 Q. Okay. Well, aside from what you wrote
9 here, what other measures can you tell us now
10 that would accomplish the same results?

11 A. At the moment, I don't recall.

12 Q. Okay. So my recollection from these
13 emails and correspondence between you and CSU is
14 you put a fair amount of time preparing this
15 case; is that correct?

16 A. Yes.

17 Q. So you thought about it before you filed
18 it?

19 A. Yes.

20 Q. And you still can't tell us what the
21 other measures are?

22 A. There's been quite a few intervening
23 circumstances in between. I don't recall all.

24 Q. Well, regardless of what you were

1 referring to then, you've thought about the case
2 even more since then. What other measures would
3 you suggest?

4 A. I'm not sure I'm prepared to answer that
5 at the moment. I would have to think about that
6 thoroughly.

7 Q. Well, we've had -- this case has been
8 going on since February, March, six, eight
9 months. You've had plenty of time to think
10 about it. Sounds like you can't come up with
11 any measures; is that a fair statement?

12 MR. BESSER: Objection.

13 A. That is not.

14 Q. I'm sorry?

15 A. No.

16 Q. No what? No, you can't come up with any
17 other measures?

18 A. I wouldn't say that.

19 Q. Then tell us what those measures are.

20 A. I would need more time to prepare.

21 Q. All right. So we had two other
22 witnesses who testified in this case and they
23 indicated that, based on their professional
24 experience, they couldn't think of any other

1 ways to accomplish the goals the search is
2 intended to provide.

3 MR. BESSER: Objection. Objection.

4 MR. MARTI: All right. You can make
5 your objection.

6 Q. What other -- are you in a position to
7 refute their testimony?

8 MR. BESSER: Assumes facts not in
9 evidence.

10 Q. Do you want to answer the question?

11 A. I do not.

12 Q. You do not --

13 A. I do not wish to answer.

14 Q. Well, that's not an option, sir.

15 A. Okay. I was just answering the other
16 question.

17 I don't believe so, not at this time.

18 Q. Okay. Let's go to page 13 of this
19 document, Exhibit K.

20 A. Okay.

21 Q. Do you see the sentence that begins --
22 do you see the paragraph that begins at line
23 288, goes down to 295?

24 A. Yes, I do.

1 Q. Can you read that for us, please?

2 A. Sure. Granting the temporary
3 preliminary injunction requested by plaintiff
4 will not harm others because, as mentioned in
5 detail above, defendants possess numerous
6 alternative options that will allow it to
7 continue to fulfill its legitimate government
8 function of providing higher education services
9 while still maintaining academic integrity for
10 the examinations that are administered remotely.
11 Because all the above options are sufficient for
12 defendant's purposes, any alleged harm does not
13 justify defendants' complete and total disregard
14 for students' Fourth Amendment rights. Granting
15 plaintiff's motion serves the interest of the
16 public as it ensures defendants can continue to
17 provide educational services while protecting
18 Fourth Amendment rights of the students until
19 trial can be held.

20 Q. So what were these options that you're
21 referencing here?

22 A. I don't recall where they are above. I
23 can go back and check.

24 Q. That's fine. Do you want to take a

1 break so you have time to go through the
2 document, or do you want to do it on the record?

3 A. On the record is fine.

4 MR. BESSER: Let's take a bathroom
5 break.

6 MR. MARTI: That's fine. It's 11:06.
7 Do you want to say 11:20?

8 THE WITNESS: Sounds good to me.

9 MR. MARTI: Does that work for you,
10 Matt?

11 MR. BESSER: Yes. Thank you.

12 (Recess.)

13 BY MR. MARTI:

14 Q. We took a little break there,
15 Mr. Ogletree. My recollection is that during
16 the break you were going to review Exhibit K so
17 that you could tell us what the options were
18 that you reference of page 13 of that document.
19 I believe at the time I was referencing the
20 statement made on lines 171 through 176 of page
21 8. Let me get there. What lines were you
22 referring to?

23 A. 171 through 176.

24 Q. why don't you read those for us.

1 A. One moment.

2 The students can continue to monitor
3 students taking their examinations remotely
4 through their webcams to the extent that
5 students consent to defendants viewing to
6 dissuade cheating and, should suspicious
7 behavior be detected, a search can be conducted
8 to investigate when reasonable suspicion and
9 evidence is articulated. Further, defendants
10 can retroactively determine if cheating has
11 occurred through many avenues, one of which
12 being the electronic data collected by security
13 measures on the examination provider,
14 Blackboard.

15 Q. So what's the electronic data that you
16 reference in line 175?

17 A. I don't recall exactly.

18 Q. Okay. And what are the security
19 measures that you reference on line 176?

20 A. I don't recall all of them.

21 Q. Okay. So if I'm reading lines 171
22 through 17 -- the sentence that starts on 171
23 and goes through 174, am I correct in
24 understanding that you're saying that the

1 University meets solely through consensual
2 scans?

3 A. That wasn't exactly what I intended at
4 the time.

5 Q. Okay. Well, I don't want to put words
6 in your mouth, so why don't you tell us.

7 A. I meant like once a laptop is placed,
8 the webcam is facing how mine is currently, only
9 upper torso showing, nothing else. So that
10 would be what an individual consented to showing
11 what they placed in the view of the camera.

12 Q. Okay. So you're looking at me on Zoom.
13 I'm looking at you. We both have upper torso
14 shots.

15 A. Yes.

16 Q. I have a big pile of notes here that I'm
17 working from. You can't see those, can you?

18 A. I cannot.

19 Q. All right. Okay. Very good.

20 (Pause.)

21 BY MR. MARTI:

22 Q. So, Mr. Ogletree, continuing with our
23 discussion of what you can and can't see in
24 Zoom, through Zoom. Can you tell if there's

1 anybody else in the room with me here?

2 A. I cannot.

3 Q. Okay. And let's go to Exhibit L, as in
4 Larry.

5 ==0==

6 (Deposition Exhibit L marked.)

7 ==0==

8 A. Okay.

9 BY MR. MARTI:

10 Q. Okay. So this is an affidavit you filed
11 with the court in this case?

12 A. That is correct.

13 Q. And it appears to be a true and accurate
14 copy of it?

15 A. I believe so.

16 Q. Okay. Can you go to page 2, paragraph
17 4, and read that into the record for us, please?

18 A. Yes. Based upon my conversations with
19 the director of Testing Services at Cleveland
20 State University during my disability
21 accommodations assessment, defendants possess
22 security measures in addition to the search
23 policy that will permit Cleveland State
24 University to maintain academic integrity and

1 continuity of governmental services even if the
2 search policy were removed.

3 Q. So when did you have this conversation
4 with the director of Testing Services?

5 A. I don't recall exactly when that
6 occurred.

7 Q. So it must have been sometime before you
8 filed this affidavit on March 18th --

9 A. Yes.

10 Q. -- can we agree on that?

11 A. It was.

12 Q. Okay. How long did that conversation
13 last?

14 A. I don't recall exactly. Maybe half
15 hour, 45 minutes.

16 Q. And how was that conversation conducted?

17 A. Through Zoom.

18 Q. Through Zoom. Okay. So what are these
19 security measures in addition to the search
20 policy that you're referencing?

21 A. I don't recall what she stated. It was
22 something along the lines of she could disable
23 additional security measures in Blackboard as an
24 accommodation if that was necessary.

1 Q. Okay. Just to be clear, I've asked you
2 a number of times what the other measures were,
3 and the only thing that you were able to
4 identify were the pages -- the documents on line
5 174 and immediately following Exhibit K. Can
6 you think of any others?

7 A. I can't, but --

8 Q. Please do.

9 A. I'm sorry, what was that?

10 Q. Please do. This is your chance to tell
11 us how it should be done differently.

12 MR. BESSER: Objection. That's not
13 accurate.

14 You can answer if you can, Aaron.

15 A. I don't believe this is the appropriate
16 time right now --

17 MR. BESSER: Don't -- just answer the
18 question if you can.

19 A. Okay. Could you repeat the question?

20 Q. Yeah. So I've asked you a number of
21 times what the alternatives would be to this
22 room scan policy. And the only thing that
23 you've been specifically identifying is the
24 materials at lines 171 and following in Exhibit

1 K. Can you think of any other alternatives?

2 A. Yes.

3 Q. What are they?

4 A. At the moment, I cannot elaborate on
5 them.

6 Q. Okay. I think we beat this one to death
7 here.

8 Let's talk a little bit about what
9 you're doing this semester. You're still
10 enrolled in Cleveland State?

11 A. Yes.

12 Q. Taking a full load?

13 A. Yes.

14 Q. Okay. Are your classes in person or
15 online?

16 A. In person.

17 Q. I'm sorry?

18 A. In person.

19 Q. Oh, you're lucky.

20 Will your examinations be in person or
21 online?

22 A. That's to be determined.

23 Q. What do you mean?

24 A. I had a doctor fill out a form for

1 additional accommodations.

2 Q. So you've asked to have them online; is
3 that what you're saying?

4 A. I haven't yet.

5 Q. Is that your desire, though? Is that
6 what you would prefer?

7 A. Depending on the pandemic, with my
8 health issues, family health issues, it may be
9 best.

10 Q. Okay. Have you had any other proctored
11 exams at CSU other than the one we're litigating
12 here today?

13 A. I don't believe so.

14 MR. MARTI: Let's take a five-minute
15 break. Let me speak with my co-counsel. I
16 think we may be done, though. Let's reconvene
17 at 11:35. Does that work for everybody?

18 THE WITNESS: Yes.

19 MR. MARTI: Okay. Thank you.

20 (Recess.)

21 MR. MARTI: That's all we have now,
22 unless Matt's got some questions.

23 MR. BESSER: I don't. We will read.

24 MR. MARTI: We need a copy of it.

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Thereupon, the testimony of September

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3, 2021, was concluded at 11:37 a.m.

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1 CERTIFICATE

2 STATE OF OHIO :
3 COUNTY OF FRANKLIN : SS:

4 I, Rhonda Lawrence, a stenographic
5 court reporter and notary public in and for the
6 State of Ohio, duly commissioned and qualified,
7 do hereby certify that the within-named AARON M.
8 OGLETREE was first duly sworn to testify to the
9 truth, the whole truth, and nothing but the
10 truth in the cause aforesaid; that the testimony
then given was taken down by me stenographically
in the presence of said witness, afterwards
transcribed; that the foregoing is a true and
correct transcript of the testimony; that this
deposition was taken at the time and place in
the foregoing caption specified.

11 I certify that I am not a relative or
12 employee of any attorney or counsel employed by
13 the parties hereto and that I am not financially
interested in the action. I further certify
review of the transcript was requested.

14 In witness whereof, I have hereunto
15 set my hand at Columbus, Ohio, on this 17th day
of September, 2021.

16

17

18

19

20

21

Rhonda Lawrence

22

Rhonda Lawrence
Notary Public, State of Ohio

23 My commission expires: October 9, 2023

24

Aaron Ogletree
September 03, 2021

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